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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,022	09/11/2002	Michael Chiapperini	02-087-MC	7557

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LAMBERT & ASSOCIATES, P.L.L.C.  
92 STATE STREET  
BOSTON, MA 02109-2004

EXAMINER
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NGUYEN, PHUNG

ART UNIT	PAPER NUMBER
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2632

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/065,022

Applicant(s)

MICHAEL CHIAPPERINI

Examiner

Phung T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 9, 13, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts (U.S. Pat. 5,086,377).

**Regarding claim 1:** Roberts discloses personal accessory and defense baton comprising a housing member, wherein said housing member comprises a design not intended to mask the function of said personal safety device; a repellant spray member housed inside of the housing member; a sound generating member housed inside of the housing member; means for activation of the repellant spray member, wherein upon activation of the repellant spray member a repellant stored inside of the repellant spray member is released from the repellant spray member; and means for activation of the sound generating member, wherein upon activation of the sound generating member a sound is emitted from the sound generating member (figs. 1-4, col. 4, lines 5-13 and 41-46).

**Regarding claim 2:** Roberts discloses the housing member has a first aperture 14 for allowing release from the housing member of the repellant when the repellant spray is activated (figure 1, col. 4, lines 5-13).

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**Regarding claim 3:** Roberts discloses the housing member has a second aperture 16 for allowing emission from the housing member of the sound when the sound generating member is activated (figure 1, col. 4, lines 41-46).

**Regarding claim 9:** Roberts teaches wherein the repellant is a mixture of noxious gases (col. 1, lines 12-17).

**Regarding claim 13:** All the claim subject matter is already discussed in respect to claims 1-3 above.

**Regarding claim 16:** Refer to claim 9 above.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 7, 8, 10, 11, 14, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts in view of Malone et al. (U.S. Pat. 5,859,588).

**Regarding claim 4:** Roberts discloses the repellant spray member and the sound generating member but does not specially teach the claimed simultaneous activation of the repellant spray member and the sound generating member. However, Malone et al. disclose a device equipped to disperse pepper spray and air siren comprising means for simultaneous activation of the repellant spray member and the sound generating member (col. 2, lines 58-60). Therefore, it would have been obvious to the skilled artisan to employ the teaching of Malone et

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al. in the system of Roberts so that the device of Roberts can simultaneously activate the repellant spray member and the sound generating member which is an advantage.

**Regarding claim 7:** Malone et al. disclose an actuator 12, integrated with the housing member, wherein the actuator has means for simultaneous activation of the repellant spray member and the sound generating member (col. 2, lines 58-60).

**Regarding claim 8:** Malone et al. disclose the repellant is a noxious gas (col. 2, lines 16-18).

**Regarding claim 10:** Malone et al. disclose the sound generating member is comprised of a compressed gas container coupled to a horn (col. 2, lines 25-44).

**Regarding claim 11:** Malone et al. disclose the sound generating member is comprised of a compressed gas container coupled to a whistle (col. 2, lines 25-44).

**Regarding claim 14:** Refer to claim 4 above.

**Regarding claim 15:** Refer to claim 8 above.

**Regarding claim 17:** Refer to claim 10 above.

**Regarding claim 18:** Refer to claim 11 above.

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts in view of Keeter (U.S. Pat. 5,867,099).

**Regarding claim 5:** Roberts does not disclose the actuator has means for selectively activating the repellant spray member as claimed. However, Keeter discloses a motion sensing lighting and alarming system comprising the three position mini-slide switch 28 to select the particular mode (light mode, audible mode, or both the light and the audible alarm) as seen in

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figure 2, col. 4, lines 65-67, and col. 5, lines 1-7. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the switch 28 of Keeter in the system of the Roberts because they both teach an alarm system to deter an attacker. It is seen that Keeter's teaching of three-position mini-slide switch would enhance the system of the Roberts by giving the user an option of selecting the particular mode as desired.

**Regarding claim 6:** Refer to claim 5 above.

6. Claims 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts in view of Masi et al. (U.S. Pat. 5,517,180).

**Regarding claim 12:** Roberts teaches the sound generating member has means for emitting sound waves (col. 5, lines 3-13). Roberts does not disclose the sound generating member has mean for emitting sound waves that are audible to animals and not audible to humans as claimed. However, Masi et al. disclose a personal protection device comprising the alarm 826 can be a high pitched frequency which deters animals (figure 8, col. 9, lines 14-18). Therefore, it would have been obvious to one of ordinary skill the art at the time the invention was made to employ the teaching of Masi et al. in the system of the Roberts because they teach a personal protection device using sound that renders the device very effective against any potential attackers. The teaching of Masi et al. would extend the use of the system of Roberts by providing an alternative use for a person to ward off attacking dogs and other attacking animals.

**Regarding claim 19:** Refer to claim 12 above.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phung Nguyen whose telephone number is 571-272-2968. The examiner can normally be reached on Monday to Friday from 8:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu can be reached on 571-272-2964. The fax number for this Group is (703) 872-9314.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 571-272-2600.

Phung Nguyen

A handwritten signature in black ink, appearing to read 'Phung Nguyen', with a long horizontal flourish extending to the right.

Date: May 3, 2005